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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

15 SOUNDEXCHANGE, INC., a Delaware
16 corporation,

17 Plaintiff,

v.

SONOS, INC., a Delaware corporation; and
RAPSODY INTERNATIONAL INC. dba
NAPSTER, a Delaware corporation.

Defendants

Case No.: 2:25-cv-05454-HDV-BFM

**DEFENDANT SONOS, INC.'S NOTICE OF
MOTION AND MOTION TO DISMISS, OR IN
THE ALTERNATIVE, MOTION TO STAY**

[Filed Concurrently with Declaration of Nina D. Boyajian; Proposed Order; Request for Judicial Notice; Declaration of Nina D. Boyajian in Support of Request for Judicial Notice; Proposed Order]

Date: November 13, 2025
Time: 10:00 a.m.
Place: Courtroom 5B

Judge: Hon. Hernán D. Vera
Action Filed: June 16, 2025

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 13, 2025, at 10:00 a.m., in Courtroom 5B of the
3 above-captioned Court, located at 350 W. 1st Street, Los Angeles, California 90012, Defendant Sonos, Inc.
4 (“Sonos”) will, and hereby does, move for an order dismissing the complaint of Plaintiff SoundExchange,
5 Inc. (“SoundExchange”) pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, stay
6 the action.

7 On August 7, 2025, the Honorable Naomi Reice Buchwald in the Southern District of New York
8 issued a Memorandum and Order in the case of *SoundExchange, Inc. v. Sirius XM Radio Inc.*, 1:24-cv-
9 05491 (S.D.N.Y.) (“Sirius”) finding that SoundExchange does not have standing under Section 114 of the
10 Copyright Act to litigate royalty disputes (ECF 86 (“Sirius Order”)). The *Sirius* Order has a collateral
11 estoppel effect on this case because (1) the issue decided in the *Sirius* Order is identical to the one sought
12 to be litigated here; (2) the *Sirius* Order is a final judgment on the merits; and (3) SoundExchange—the
13 party against whom collateral estoppel is asserted—was a party in *Sirius. Skilstaf, Inc. v. CVS Caremark*
14 *Corp.*, 669 F.3d 1005, 1021 (9th Cir. 2012). While Sonos contends that this action should be dismissed in
15 its entirety and with prejudice based on the collateral estoppel effect of *Sirius*, should the Court be
16 disinclined to dismiss the case at this time, it should be stayed in its entirety pending a final, non-appealable
17 judgment in *Sirius*.

18 This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and
19 Authorities, the Request for Judicial Notice, the Declaration of Nina D. Boyajian in support of the Request
20 for Judicial Notice, the Declaration of Nina D. Boyajian pursuant to Civil Local Rule 7-3, all pleadings and
21 files in this action, all matters of which this Court may take judicial notice, and upon such other and further
22 evidence and argument as may be presented to the Court at or before the hearing.

23 This Motion is made following counsel for the parties’ meet and confer conference pursuant to
24 Civil Local Rule 7-3, held on August 28, 2025. At the meet-and-confer, SoundExchange’s counsel advised
25 that he believed the *Sirius* Order was wrongly decided, is not binding on this Court, and SoundExchange

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1 intends to appeal the *Sirius* Order to the Court of Appeals for the Second Circuit. Accordingly,
2 SoundExchange opposes the Motion.

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4 Dated: September 9, 2025 GREENBERG TRAURIG, LLP

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6 By: /s/ Nina D. Boyajian

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Nina D. Boyajian
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Attorneys for Defendant Sonos, Inc.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 SoundExchange, Inc. (“SoundExchange”) brings claims against Sonos, Inc. (“Sonos”) and
4 Rhapsody International Inc. (“Napster”) for alleged underpayment and nonpayment of statutory royalties
5 under the Copyright Act. SoundExchange’s claims against Sonos are meritless—Sonos has no obligation
6 to pay royalties to SoundExchange as that obligation solely belongs to Napster under the parties’
7 agreements. But the Court does not need to reach the merits of SoundExchange’s claims against Sonos for
8 purposes of this Motion.

9 For this Motion, the Court need only find that SoundExchange is collaterally estopped from
10 asserting claims for underpayment or nonpayment of royalties under Section 114 of the Copyright Act. On
11 August 7, 2025, the Honorable Naomi Reice Buchwald in the Southern District of New York issued a
12 Memorandum and Order in the case of *SoundExchange, Inc. v. Sirius XM Radio Inc.*, 1:24-cv-05491
13 (S.D.N.Y.) (“Sirius”) finding that SoundExchange lacks standing under Section 114 of the Copyright Act
14 to litigate royalty disputes (ECF 86 (“Sirius Order”)).¹ The *Sirius* court concluded that “Section 114 fails
15 to confer on SoundExchange – either expressly or impliedly – the authority to commence a legal action,”
16 and dismissed SoundExchange’s claims with prejudice. (*Sirius* Order at 33.)

17 Because there is no daylight between SoundExchange’s claims against Sirius and its claims against
18 Sonos here, SoundExchange is collaterally estopped from asserting those claims. Each of the elements of
19 collateral estoppel is met: (1) the issue decided in the *Sirius* Order is identical to the one sought to be
20 litigated here; (2) the *Sirius* Order is a final judgment on the merits; and (3) SoundExchange—the party
21 against whom collateral estoppel is asserted—was a party in *Sirius. Skilstaf, Inc. v. CVS Caremark Corp.*,
22 669 F.3d 1005, 1021 (9th Cir. 2012). Accordingly, SoundExchange’s Complaint against Sonos should be
23 dismissed with prejudice. In the alternative, this action should be stayed in its entirety pending a final, non-
24 appealable judgment in *Sirius*.

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¹ The *Sirius* Order is attached as Exhibit A to the concurrently filed Declaration of Nina D. Boyajian in support of Request for Judicial Notice (“Boyajian Decl.”).

1 **II. RELEVANT ALLEGATIONS AND BACKGROUND**

2 **A. SoundExchange's Complaint**

3 SoundExchange alleges that Sonos, through its streaming platform, Sonos Radio, is a statutory
4 licensee of SoundExchange's "copyrighted sound recordings," which are streamed on Sonos Radio.
5 (Compl. ¶¶ 17, 20.) SoundExchange alleges that Sonos Radio is "powered by Napster," and that for "the
6 transmission periods April 2020 through April 2022, Napster submitted the required statements of account
7 and timely paid all royalties due to SoundExchange, as Sonos's authorized agent." (*Id.* ¶¶ 24-25.)
8 According to SoundExchange, after Napster was "acquired by [] venture capital firms," "Sonos (as the
9 owner and operator of Sonos Radio) and Napster (as Sonos's agent) failed to submit statements of account
10 or pay royalties to SoundExchange." (*Id.* ¶¶ 26, 29.)

11 SoundExchange alleges that it subsequently retained an auditor to audit Sonos Radio, and that the
12 auditor concluded "that Napster's acquisition in May 2022 resulted in a complete breakdown of reporting
13 and payment for the Sonos Radio service." (*Id.* ¶¶ 30-35.) SoundExchange further alleges "[i]n or about
14 April 2023, Sonos ended its partnership with Napster and transitioned the Sonos Radio service backend to
15 Deezer." (*Id.* ¶ 38.) SoundExchange claims "Sonos and Napster have made certain payments that fall far
16 short of their obligations" and have "failed to pay at least \$3,423,844.41 comprising royalties owed for the
17 period October 2022 to April 2023, interest, late fees, and auditor fee-shifting costs, and subtracting Sonos
18 and Napster's payments made to date." (*Id.* ¶ 41.) Based on these allegations, SoundExchange brings
19 claims against Sonos and Napster for (1) underpayment of statutory royalties under 17 U.S.C. §
20 114(f)(3)(B), and (2) non-payment of statutory royalties under 17 U.S.C. § 114(f)(3)(B). (*Id.* ¶¶ 42-57.)

21 **B. The Preclusive Order in *SoundExchange, Inc. v. Sirius XM Radio Inc.*, 1:24-cv-05491
(S.D.N.Y.)**

22 SoundExchange's claims in *Sirius* are no different from its claims against Sonos here. In *Sirius*,
23 SoundExchange brought a "copyright action against Sirius, alleging that it has failed to comply with its
24 royalty payment obligations under Section 114" of the Copyright Act. (*Sirius* Order at 6.) Sirius moved for
25 judgment on the pleadings on the grounds that Section 114 does not give SoundExchange a private right
26 of action to collect underpaid royalties and thus SoundExchange lacks standing to bring such claims. In
27 granting Sirius's motion, the court ruled:

1 • “[T]here is a dearth of evidence, let alone ‘substantial evidence,’ for us to infer that
2 Congress’s omission of any legal authority for [a private right of action for] SoundExchange in Section
3 114 was anything but deliberate...Thus, the text of the Copyright Act clearly lacks an express conferral of
4 a right of action upon SoundExchange.” (*Id.* at 12.)

5 • “Section 114 lacks any rights creating language as to SoundExchange. Even if it could be
6 so interpreted, Section 114 does not ‘manifest[] an intent to ‘create . . . a private remedy.’ Rather, Section
7 114 outlines the ‘[s]cope of exclusive rights in sound recordings,’ namely, by granting artists and record
8 companies that create sound recordings a mechanism, through an intermediary ‘collective,’ to license those
9 rights for public dissemination of their copyrighted works.” (*Id.* at 15 (internal citations omitted).)

10 • “Congress’s conferral of several enforcement methods other than litigation counsels against
11 implying a right of action for SoundExchange.” (*Id.* at 20.)

12 • “Section 115 of the Copyright Act ... endows the Mechanical Licensing Collective with the
13 authority to challenge a noncompliant licensee by ‘commenc[ing] an action in an appropriate district court
14 of the United States for damages and injunctive relief.’ §§ 115(6)(A)-(C)(i). This section is particularly
15 salient because the legally-empowered MLC serves a functionally equivalent role to that of
16 [SoundExchange] under Section 114. This is powerful evidence that Congress’s omission of legal authority
17 for SoundExchange was intentional.” (*Id.* at 21-22.)

18 The court rejected each of SoundExchange’s arguments in support of standing. First,
19 SoundExchange argued that the text of Section 114, which refers to the “permissibility of deducting costs
20 from licensing and royalty and enforcement efforts” in a statutorily-prescribed accounting mechanism for
21 distributing royalties to recording artists and labels, “necessarily implies that SoundExchange can enforce
22 artists’ rights via legal action” in district court. (*Id.* at 15-16.) The court carefully considered and rejected
23 this argument for a variety of reasons. (*Id.* at 16-18.)

24 Second, in response to SoundExchange’s policy arguments, the court held that it could “not opine
25 on whether SoundExchange’s policy arguments are reasonable, practical, or beneficial, as [it was]
26 powerless to rely on any such arguments to rewrite the statute.” (*Id.* at 25.)

27 Third, the court rejected SoundExchange’s argument that it has standing to sue because it has sued
28 in the past as failing “on the law and on the facts.” (*Id.* at 25-29.)

29 Fourth, the court found as “misplaced” SoundExchange’s reliance on legislative history: “Reliance
30 on legislative history is inappropriate when the statutory text is clear...even if we were to consider
31 legislative history, we would find that it fails to offer persuasive evidence of Congress’s intent to empower
32 SoundExchange with the type of litigation authority plaintiff [] suggest[s]... In short, the legislative history

1 does not advance plaintiff's [] contention that Section 114 should be read as extending litigation
2 enforcement authority to SoundExchange." (*Id.* at 29-30.)

3 The *Sirius* court's holding is clear: "Section 114 fails to confer on SoundExchange – either expressly
4 or impliedly – the authority to commence a legal action." (*Id.* at 33.) Accordingly, Judge Buchwald granted
5 Sirius's motion, and judgment was entered thereon. (*See* Boyajian Decl., Ex. B.)

6 III. LEGAL STANDARD

7 To survive a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), a complaint
8 must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*,
9 550 U.S. 544, 570 (2007). The facts alleged must "allow[] the court to draw the reasonable inference that
10 the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The
11 determination of whether a complaint satisfies the plausibility standard is a "context-specific task that
12 requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Courts must
13 generally accept the factual allegations in the pleadings as true and view them in the light most favorable
14 to the plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017). But a court is "not bound to accept
15 as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550
16 U.S. at 555).

17 When considering a motion to dismiss based on the doctrine of collateral estoppel, "a court may
18 take judicial notice of facts outside the pleadings." *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282
19 (9th Cir. 1986) (citations omitted). Looking "beyond the complaint to matters of public record does not
20 convert a Rule 12(b)(6) motion to one for summary judgment." *Id.*; *see also Shaw v. Hahn*, 56 F.3d 1128,
21 1129 n.1 (9th Cir. 1995) (taking judicial notice of an order in another case to determine applicability of
22 collateral estoppel).

23 IV. ARGUMENT

24 A. SoundExchange Is Collaterally Estopped from Bringing the Alleged Claims Against Sonos.

25 "Issue preclusion bars relitigation of issues adjudicated in an earlier proceeding if three
26 requirements are met: '(1) the issue necessarily decided at the previous proceeding is identical to the one
27 which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and
28 (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first

1 proceeding.”” *Skilstaf, Inc.*, 669 F.3d at 1021 (quoting *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d
2 741, 746 (9th Cir. 2006)); *see also Janjua v. Neufeld*, 933 F.3d 1061, 1065 (9th Cir. 2019)
3 (quoting *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012)) (collateral estoppel applies where “(1) the
4 issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior
5 proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary
6 to decide the merits.”). “Collateral estoppel, like the related doctrine of res judicata, has the dual purpose
7 of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and
8 of promoting judicial economy by preventing needless litigation.” *Parklane Hosiery Co. v. Shore*, 439 U.S.
9 322, 326 (1979); *Shaw*, 56 F.3d at 1131 (the doctrine of collateral estoppel “prevents relitigation of issues
10 actually litigated and necessarily decided, after a full and fair opportunity for litigation, in a prior
11 proceeding.”).

12 Each of the collateral estoppel elements is met here.

13 **The issue decided in the *Sirius* Order is identical to the one sought to be litigated here.** The
14 threshold issue for the viability of SoundExchange’s claims against Sonos is whether SoundExchange has
15 standing to bring claims for unpaid and/or underpaid royalties under the Copyright Act. As discussed
16 above, that is the same issue decided in the *Sirius* Order, and the *Sirius* court unequivocally found that
17 SoundExchange lacked standing to bring such claims.

18 **The *Sirius* Order is a final judgment on the merits.** The *Sirius* court entered judgment based on
19 the *Sirius* Order. (*See* Boyajian Decl., Ex. B.) Thus, the *Sirius* court entered a final judgment dismissing
20 with prejudice SoundExchange’s complaint based on lack of standing to bring claims for unpaid and/or
21 underpaid royalties under Section 114 of the Copyright Act—again, the same claims SoundExchange
22 brings against Sonos here. That SoundExchange has filed a notice of appeal of the *Sirius* Order is of no
23 consequence. The Ninth Circuit has held that “a final judgment retains its collateral estoppel effect...while
24 pending appeal.” *Collins v. DR Horton, Inc.*, 505 F.3d 874, 882-83 (9th Cir. 2007) (“the benefits of giving
25 a judgment preclusive effect pending appeal outweigh any risks of a later reversal of that judgment”); *see*
26 *also Tripati v. Henman*, 857 F.2d 1366, 1367 (9th Cir. 1988) (stating that a pending appeal does not affect
27 a judgment’s finality for preclusion purposes); *Convergence Corp. v. Videomedia*, 539 F. Supp. 760, 762
28 (N.D. Cal. Apr. 15, 1981) (“It is a well-established general rule, however, that pendency of an appeal does

1 not suspend the operation of an otherwise final judgment as res judicata or collateral estoppel.”); *Cygnus*
2 *Telecoms. Tech., LLC v. Am. Int'l Telephonics, LLC*, 569 F. Supp. 2d 1035, 1038 (N.D. Cal. 2008) (granting
3 motion to dismiss based on collateral estoppel and holding “the pendency of an appeal does not prevent
4 this Court from applying collateral estoppel”); *XR Commc 'ns, LLC v. D-Link Sys., Inc.*, No. 8:17-cv-00596-
5 DOC-JDE, 2022 U.S. Dist. LEXIS 25984, at *14 (C.D. Cal. Jan. 4, 2022) (granting motion for judgment
6 on the pleadings based on collateral estoppel and citing to the Ninth Circuit’s “clear instructions” that
7 pendency of appeal does not prevent preclusive effect).

8 **SoundExchange—the party against whom collateral estoppel is asserted—was a party in**
9 *Sirius*. Finally, the third element of collateral estoppel has also been satisfied—SoundExchange was the
10 plaintiff in *Sirius* and is the plaintiff here. It had a full and fair opportunity to litigate the issue of standing;
11 indeed, it marshalled a host of trade organizations as *amici curiae* on its behalf. (See Boyajian Decl., Ex.
12 C (*Sirius*, ECF No. 77).) The *Sirius* court rejected the arguments of SoundExchange and its *amici*.

13 * * *

14 Each of the elements for collateral estoppel is met here. The *Sirius* court’s ruling that
15 SoundExchange lacks standing to sue for nonpayment and underpayment of royalties precludes relitigation
16 of the standing issue here, even if SoundExchange believes *Sirius* was wrongly decided. See *B&B*
17 *Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 157 (2015) (“Issue preclusion prevents relitigation of
18 wrong decisions just as much as right ones.”) (cleaned up). Accordingly, SoundExchange’s claims against
19 Sonos should be dismissed with prejudice.

20 **B. In the Alternative, this Action Should Be Stayed Pending the Entry of a Final, Non-**
21 **Appealable Order in Sirius.**

22 If the Court declines to dismiss SoundExchange’s claims against Sonos on collateral estoppel
23 grounds at this stage, Sonos respectfully requests that the action be stayed in its entirety pending a final,
24 non-appealable judgment in *Sirius*.

25 A district court has discretionary power to stay proceedings. See *Peck v. Cnty. of Orange*, 528 F.
26 Supp. 3d 1100, 1105 (C.D. Cal. 2021) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The Court
27 “may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a
28 stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Leyva*

1 v. *Certified Grocers of Cal. Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). The factors to be weighed in deciding
2 whether to stay a pending proceeding are (1) “the possible damage which may result from the granting of
3 a stay,” (2) “the hardship or inequity which a party may suffer in being required to go forward,” and (3)
4 “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and
5 questions of law which could be expected to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098,
6 1110 (9th Cir. 2005).

7 Each of these factors weighs in favor of a stay. First, there will be no damage from the granting of
8 a stay. SoundExchange has allegedly known of its claims against Sonos since 2022—three years before it
9 filed this action; any additional delay would very likely be shorter, particularly given that a notice of appeal
10 of the *Sirius* order has already been filed. Second, and on the other hand, because the *Sirius* Order is
11 dispositive of this case, as discussed above, Sonos will be unfairly prejudiced by having to spend time and
12 resources litigating this action that will be disposed of on collateral estoppel grounds if the *Sirius* Order is
13 upheld. Third, a stay will promote judicial efficiency and simplify the issues because a threshold standing
14 issue is involved, and at the latest, this action will be dismissed on collateral estoppel grounds once the
15 *Sirius* Order has been upheld.

16 **V. CONCLUSION**

17 SoundExchange has already litigated and lost the issue of whether it has standing to assert claims
18 for underpayment of statutory royalties under 17 U.S.C. § 114, the same claims it asserts against Sonos in
19 this action. Accordingly, SoundExchange is collaterally estopped from bringing its claims against Sonos,
20 and the Complaint against Sonos should be dismissed with prejudice. In the alternative, if the Court is not
21 inclined to dismiss the Complaint at this stage, Sonos respectfully requests that the Court stay the action in
22 its entirety pending the entry of a final, non-appealable judgment in *Sirius*.

23
24 Dated: September 9, 2025

GREENBERG TRAURIG, LLP

25 By: /s/ Nina D. Boyajian

26 Nina D. Boyajian
27 Attorneys for Defendant Sonos, Inc.

1 **L.R. 11-6.2 CERTIFICATION OF COMPLIANCE**

2 The undersigned, counsel of record for Defendant Sonos, Inc., certifies that this brief contains 2,756
3 words, which complies with the word limit of L.R. 11-6.1.

4

5 Dated: September 9, 2025

GREENBERG TRAURIG, LLP

6 By: /s/ Nina D. Boyajian

7 Nina D. Boyajian
8 *Attorneys for Defendant Sonos, Inc.*

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